IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.07.2006

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mr.Justice P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.2139 of 2006

Commissioner of Income-Tax,
Chennai. ... Appellant

Vs.

S.Sakthimala ... Respondent

The above T.C.(Appeal) is preferred under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' (SMC) Bench, dated 11.11.2005 made in ITA No.3271/Mds/2004 for the assessment year 2001-02. and against the order of the Commissioner of Income Tax (Appeals) in ITA.No.371/04-05 dated 27.9.2004.

For Appellant : Mrs.Pushya Sitaraman

J U D G M E N T

(Judgment of the Court was made by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal made in ITA.No.3271/Mds/2004, dated 11.11.2005.

2. The Revenue is the appellant. The assessment year involved is 2001-2002. The case of the appellant is that the assessee/respondent herein, availed the benefit of the voluntary retirement scheme and claimed exemption of the amount of compensation received, both under Section 10(10C) and Section 89(1) of the Income Tax Act.

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3. The Assessing Officer granted exemption as envisaged under Section 10(10C) of the Act, but denied the exemption under Section 89(1) of the Act, on the ground that once exemption under Section 10(10C) is allowed, Section 89(1) cannot be invoked. On appeal at the instance of the assessee, the Commissioner of Income-tax (Appeals), taking the view that it is possible to interpret the sections both ways, and where there is an ambiguity, the benefit should be given to the tax payer, allowed the appeal, which was confirmed by the Income Tax Appellate Tribunal, on appeal by the Revenue.

4. Aggrieved by the same, the Revenue has preferred this appeal raising the following substantial question of law :

> "Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is eligible to claim simultaneous benefit under Section 10(10C) as well as Section 89(1) in respect of the compensation received under the voluntary retirement scheme?"

5. It is fairly conceded by the learned counsel appearing for the Revenue that the issue raised in the above question is squarely covered against the Revenue by the decision of this Court in Commissioner of Income-tax Vs. G.V.Venugopal (273 ITR 307), wherein it is held as under:-

> "The second proviso to section 10(10C) only refers to exemption claimed in any other year. Every assessment year is a self-contained unit and the mere fact that the relief under section 89 had been spread over several years, did not mean that the relief was not in respect of a particular assessment year. There was no prohibition to the twin benefits in respect of the amount received under the voluntary retirement scheme. The relief contemplated under section 89(1) is aimed to mitigate hardship that may be caused on account of the high incidence of tax due to progressive increase in tax rates. Payment under the voluntary retirement scheme is covered by the word "salary" which has been given a very wide definition in section 17. Since the assessee was covered by section 89, he would get both the benefits."

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6. In view of the above settled proposition of law, we do not see any merit in this appeal and the same is dismissed. No costs.

sra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
SMC Bench "B", Chennai.
2.The Secretary, Central Board
of Direct Taxes, New Delhi.
3.The Commissioner of Income Tax
(Appeals) -IV, 121, Mahatma
Gandhi Road, Chennai-600 034.
4.The Asst. Commissioner of Income-tax,
Salary Circle II, Chennai.

+ 1 cc to Mrs. Pushyasitaram, SSC (IT) SR No. 32795

T.C.(A) No.2139 of 2006

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SR/22.8.2006

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